

Message Text

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INFO OCT-01 EA-06 ISO-00 PM-03 CIAE-00 INR-07 NSAE-00

DODE-00 SS-15 NSC-05 SP-02 EB-07 A-01 OPR-02 SR-02

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DOD/GC - MR. FORMAN

L/EA - MRS. VERVILLE

L/T - MR. ROVINE

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FM SECSTATE WASHDC

TO AMEMBASSY SAIGON IMMEDIATE

INFO AMEMBASSY PHNOM PENH

CINCPAC HONOLULU HI

C O N F I D E N T I A L STATE 072737

E.O. 11652:GDS

TAGS: ACLM, MILI, VS

SUBJ: IMMUNITY OF USG FROM LIABILITY FOR NON-US CITIZEN

THIRD PARTY TORT CLAIMS ARISING FROM USG FURNISHED

EMERGENCY EVACUATION

REF : SAIGON 3630

1. DEPT AGREES THAT RELATIONSHIP OF USG AND ITS
CONTRACTORS TO VIETNAMESE NATIONALS BEING EVACUATED SHOULD
NOT RPT NOT INCLUDE LIABILITY TO RESPOND IN DAMAGES IN
EVENT OF DEATH, INJURY OR PROPERTY LOSS INCIDENT TO
EVACUATION. ACCORDINGLY, EMBASSY IS AUTHORIZED TO ELICIT
FROM GVN EXCHANGE OF DIPLOMATIC NOTES REQUESTING GENERALLY
US ASSISTANCE IN EVACUATION AND WAIVING ANY AND ALL CLAIMS
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OF GVN AND ITS NATIONALS AGAINST USG, ITS AGENTS, EMPLOYEES,

OR OTHER PERSONS CARRYING OUT ACTIVITIES UNDER CONTRACT TO OR FINANCED BY USG, WHICH MIGHT ARISE IN COURSE OF THEIR PARTICIPATION IN EVACUATION EFFORT.

2. WAIVER SHOULD BE EFFECTIVE FROM COMMENCEMENT OF EMERGENCY AND SHOULD CONTINUE IN FORCE INDEFINITELY. ALSO, WAIVER SHOULD BE SUFFICIENTLY BROAD TO COVER GVN NATIONALS EVACUATED FROM CAMBODIA. IN THIS REGARD, AMEMBASSY PHNOM PENH ADVISES THAT GVN EMBASSY THERE HAS REQUESTED SUCH ASSISTANCE. WE PROPOSE TO AUTHORIZE US CONTRACTOR CARRYING RICE FROM VIETNAM TO CARRY VIETNAMESE EMBASSY PERSONNEL

AND EQUIPMENT ON RETURN FLIGHT. (THIS PROPOSAL OUTLINED IN PHNOM PENH 5740, BEING REPEATED TO YOU.)

3. ALTHOUGH CLAIMS BY US CITIZENS AGAINST GVN SEEM UNLIKELY, TO SEEK BY EXECUTIVE AGREEMENT TO DENY POSSIBILITY OF REDRESS THROUGH INDIVIDUAL LEGAL PROCEEDINGS WOULD RAISE SERIOUS DUE PROCESS QUESTIONS. (TORT CLAIM AGAINST GVN OR AGENT THEREOF WOULD BE TRANSITORY CAUSE OF ACTION AND MIGHT BE LITIGATED IN US, WHERE TREND IS TOWARD RESTRICTIVE VIEW OF SOVEREIGN IMMUNITY IN TORT CASES.) THEREFORE, WE DO NOT RPT NOT APPROVE OFFER OF RECIPROCAL WAIVER WITH RESPECT TO CLAIMS OF US NATIONALS.

4. BELIEVE SPECIFIC WAIVER APPLICABLE TO EVACUATION OBVIATES NEED FOR AMENDMENT TO 1965 KNOCK FOR KNOCK AGREEMENT (TIAS 5773). NOR DO WE SEE NEED TO TRY TO SUPERSEDE 1961 TREATY OF AMITY AND ECONOMIC RELATIONS (WHICH ALSO RAISES CONSTITUTIONAL ISSUES). IN EVENT OF SUIT IN US COURT, PLAINTIFF WOULD BE ACCORDED RIGHT OF ACCESS TO COURTS IN ACCORDANCE WITH TREATY, BUT GVN WAIVER COULD BE PLEADED AS SUBSTANTIVE DEFENSE. IN EVENT USG IS NAMED AS DEFENDANT, 28 USC 2680(K) WOULD ALSO APPEAR APPLICABLE AS BASIS FOR OBTAINING DISMISSAL. KISSINGER

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